

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS ANDREW FISHER,

Defendant-Appellant.

UNPUBLISHED

August 11, 2000

No. 218356

Ingham Circuit Court

LC No. 98-073908-FH

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of felonious assault, MCL 750.82; MSA 28.277, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, complainant testified that he was riding his bicycle when defendant jumped off a porch and approached him, brandishing a knife and yelling obscenities. Defendant pursued complainant until the police arrived. Upon seeing the police, defendant stopped pursuing complainant, and attempted to leave the scene. The blade on the knife taken from defendant was locked in the open position. Defendant, testifying on his own behalf, stated that he was extremely intoxicated on the day of the incident, and did not particularly recall the event with complainant. The jury found defendant guilty as charged. The trial court sentenced defendant as a fourth habitual offender to three to fifteen years in prison.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). An assault is an attempt to commit a

battery or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Defendant argues that the evidence was insufficient to support his conviction of felonious assault. Specifically, he contends that because the evidence established that he was intoxicated at the time the incident took place, the jury could not find beyond a reasonable doubt that he had the requisite intent to commit the offense. In addition, he contends that the evidence could not support a finding that he had the ability to commit a battery. We disagree on both grounds, and affirm. Although felonious assault is a specific intent crime, *People v Polk*, 123 Mich App 737, 739-740; 333 NW2d 499 (1982), and voluntary intoxication is a defense to a specific intent crime, *People v Maleski*, 220 Mich App 518, 521; 560 NW2d 71 (1996), a finder of fact is not required to conclude that a defendant's intoxication prevented him from forming the specific intent necessary to commit the charged offense. Specific intent can be express, or it can be inferred from the facts and circumstances surrounding the incident. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). The evidence showed that defendant approached complainant brandishing a knife and yelling obscenities, and pursued complainant even after complainant attempted to ride away from him. Defendant stopped his pursuit only when the police arrived. This evidence supported a finding that defendant, even though intoxicated, had the requisite specific intent to commit the charged offense. *Id.* Furthermore, complainant's testimony that defendant came within ten feet of him while brandishing the knife and that defendant's actions placed in him fear of being physically harmed, which the jury was entitled to believe, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), supported a finding that defendant committed an assault with a dangerous weapon in that he used the knife to place complainant in reasonable apprehension of an immediate battery. *Avant, supra; Grant, supra.* The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of felonious assault. *Wolfe, supra.*

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot